Cr. A 677/98

XII-128/(Jail)
R-2006-88

CF0000059532

(2)

(3) D3 (cm)

APPEAL OF PRISONER A

No. 281/98 Name मुरी चरवा

Father's name

Residence सा० फुवन सिचोरा थाना रामपुर जिला सरगुजा Age 20 वर्ष

Sentenced आजीवन on 29/01/98

Under section 302 भा०द०वि० by श्री बी० के० भारद्वाज द्वितीय अपर सत्र न्यायाधीश अम्बिकापुर सरगुजा

SIN: 1/97

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven [illegible] may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 29/01/98

2 Date of which copy received 29/01/98

3 Date on which Appeal sent

4 whether the prisoner wishes to be represented or not – Yes / No :

No. 281/98 Name मुरी चरवा @ फुवन

Continued in जिला Jail अम्बिकापुर

No. 365 Dated 16/2/98 198

Forward to the CHIEF JUDICIAL MAGISTRATE Ambikapur Surguja (M.P.)

to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न उपन्न निर्णय प्रति

Superintendent
Distt. Jail Ambikapur (Surguja)

Superintendent
Jail

Date of receipt in C. J. M's office 16-2-98

Date of receipt record to accompany 18-2-98

Memo of Appeal of the Appeliate court उच्च न्यायालय ग्वालियर जबलपुर

No [illegible] Dated 19-2 1998

Forwarded to the उच्च न्यायालय ग्वालियर जबलपुर

बी० एल० तिड़के
C. J. Magistrate
मुख्य न्यायिक मजिस्ट्रेट
अम्बिकापुर (म० प्र०)

Date of receipt in Appeliate Court .....

(P. T. O.)

(40)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 677 OF 1998

Bhurri Cherva

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Fakhruddin
Judge

Hon'ble Shri Justice V.K. Shrivastava

Sd/-
V.K.Shrivastava
Judge

post for 21-6-2006

Sd/-
Judge
21-6-2006

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 677 OF 1998

Bhurri Cherva

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

CORAM :- **HON'BLE SHRI FAKHRUDDIN, J &**
HON'BLE SHRI V.K. SHRIVASTAVA, J

Present :- Shri Ravish Verma, counsel for the appellant.
Shri Akhil Mishra, Panel Lawyer for the State.

Per Hon'ble Shri Fakhruddin, J

J U D G M E N T

Heard learned counsel for the parties.

2. The appellant has preferred this appeal against the judgment dated 29-1-1998 passed in Sessions Trial No.1/97 by the Second Additional Sessions Judge, Ambikapur, Sarguja, whereby he has been convicted under Section 302 of the Indian Penal Code for committing murder of his wife Kondi Bai and sentenced to undergo imprisonment for life.

3. Briefly stated the prosecution story is that accused Bhurri is the resident of Village-Sinchora and deceased Kondi Bai was married wife of accused Bhurri. Shivratan (PW-1) lodged the First Information Report (Ex.P/1) on 7-12-1996 to the effect that his

sister Kondi Bai was married with the accused/appellant. A day before the date of incident i.e. 6-12-1996 his sister Kondi Bai (since deceased) and accused both had come to his house. Kondi Bai stayed in the house and Bhurri went to village Sinchora, on the same day. On the next day at about 8-9' o'clock while Shivratan was going to the house of his another brother-in-law namely Siyaram situated in village Sinchora, on the way, accused met with him. PW-1 Shivratan asked him not to quarrel and he went to Sinchora and started taking meal there and at about 12' o' clock Harichand, the neighbourer came there and informed that Bhurri had killed Kondi Bai by tangi and he has seen this. Hearing this, Shivratan and his brother-in-law Siyaram came to village Chilmakala and saw that the dead body of Kondi Bai was lying in the courtyard and the blood was oozing. Shivratan's wife Fuleshwari was there and Fuleshwari told that Bhurri has cut Kondi Bai by tangi and fled away. Tangi was lying near the dead body. When Bhurri was cutting with tangi Fuleshwari, Panchmen Bai and Satmen Bai had seen. After seeing the situation of the spot Shivratan immediately went to the Police Station, Rajpur, which was situated at a distance of 10 Kms. from his village and lodged the report. After the report was written the Head Constable recorded merg intimation vide Ex.P/2. On 8-12-1996, at about 8.30 the Investigating Officer came, prepared panchnama (Ex.P/4) and also prepared the spot map. The body was sent for post-mortem vide Ex.P/8 to the Primary Health Center, Rajpur. The post-mortem was

conducted by PW-8 Dr. Pritam Ram. Post-mortem report is Ex.P/9. The following injuries were found on the body of the deceased:

> *"Antimortem :- Incised wound – back of the neck in between both sides scapula size 6 2 cm. cut alongwith vertibral column. Spinal cord common carotid artery and vein and muscles and nerve. Caused by hard and blood stained on face and back side of the body. Scalp healthy, eyes closed, pupil dilated, nose healthy, mouth closed, tongue in side the mouth. Upper and lower extremist was healthy. All natural orifices was healthy."*

In the opinion of the Doctor the cause of death was due to traumatic cut injury of back side of the neck. The death was homicidal in nature. The axe was seized (Ex.P/6) and the same was sent to the Doctor (Ex.P/10-A) for his opinion. The opinion of the Doctor is Ex.P/10 where it is opined that such injury can be inflicted by the weapon like axe. The accused was arrested on 9-12-1996 vide Ex.P/12.

4. On the charge being framed, the accused abjured the guilt and contended that he has been falsely implicated. It is further contended that he was not present on the spot.

5. The prosecution in order to establish the charge against the accused examined in all 10 witnesses. The trial Court relying upon the evidence and the material on record convicted the accused/appellant and sentenced him as narrated above.

(44)

6. As far as involvement of the accused/appellant in committing murder of Kondi Bai is concerned, Shri Verma, learned counsel appearing for the appellant, contended that there is no legal and reliable evidence on record and the appellant has been falsely roped-in in the crime. Shri Mishra, learned counsel appearing for the State, on the other hand, supported the judgment of the trial Court.

7. Perused the record. Shivratan (PW-1) lodged the First Information Report in the Police Station, Rajpur, which is 10 Kms. away from the village. In the FIR he has mentioned that Mankunwar (PW-2) has seen the incident. She is the eye witness and she narrated the story. In his evidence he stated that the appellant & Kondi Bai had come to his village a day before the incident. Kondi Bai stayed in the house and appellant had gone to village Sinchora. He further stated that the accused used to beat his sister and for this he tried to pursue both of them not to quarrel. He also stated that he had gone to the house of his another brother-in-law namely Siyaram and at that time Harichand, the neighbourer of Shivratan came there and informed about the incident. Then he came alongwith Siyaram and saw that his sister was lying dead and had sustained injury caused by tangia. He also stated that the tangia was lying near the dead body. He went to the Police Station and lodged the report (Ex.P/1). In paragraph-6 he stated that in village Sinchora his another sister is living and he had gone to her house. In paragraph-9 he further stated that he had seen the dead body of the deceased which was lying in the courtyard. His mother,

(45)

wife and daughter were there. There is nothing in the cross-examination to discredit his version.

8. Mankunwar, who is living adjacent to the house of Shivratan, has been examined as PW-2. Mankunwar (PW-2) stated in paragraph-2 of her evidence that at about 10' o clock she was sitting alongwith Kondi Bai and were cutting the vegetables (pumpkin) for preparation of badi. At that time accused asked for water from Kondi Bai, Kondi Bai gave a glass of water and then he asked for tobacco. Thereafter he asked for axe on the pretext that he has to repair his chapaal. He asked Kondi Bai to accompany him to his village; Kondi Bai said that she would not come today and after doing the house hold work she would go. On this, accused gave axe blow on her neck, as a result of which Kondi Bai fell down and blood started oozing out. Thereafter, the accused fled away from the spot. It is also stated by Mankunwar (PW-2) that while running the accused was watching the backside as to whether he is being chased or not. He left the tangia on the place of occurrence. Tangia was taken out by the mother of Kondi Bai. Thereafter villagers came there and she told about the incident to them. In para-4 of her cross-examination, she stated that she was inside the house and was preparing the food; at that time Kondi Bai was beaten. She heard the noise and saw that the accused was beating Kondi Bai. She further stated that her mother-in-law also came from the front side and she came from other side. In paragraph-5 she stated that the axe was taken on the pretext of repairing of chappals and she

(46)

stated that if the Police has not written this she does not know the reason for the same. It is denied that she had not seen the incident and it was told by her son and she had only seen the accused running from the spot. She further stated that the house is just adjacent near Hata and just at the door of the house accused was beating Kondi Bai. She has denied the suggestion that no talk had taken place with Kondi Bai. She voluntarily stated that Kondi was her sister-in-law and they used to talk to each other. She also denied that she is falsely implicating the accused. It is further stated that she does not know about any previous quarrel between the accused and Kondi Bai. We have gone through the entire evidence. There is nothing in the cross-examination so as to demolish the version of PW-2. PW-2 is the natural witness and at the time of incident she was present at the spot.

9. Apart from the above, one more witness namely Satmen Bai (PW-6), aged about 4 years is there. After putting five questions trial Court came to the conclusion that she is capable to understand the questions. Questions asked were (1) about her name, she replied that her name is Satmen; (2) about her father's name, she replied that her father's name is Shivratan; (3) about her residence, she replied as Chilmi; (4) she was asked whether we have to speak true or false, she replied as true; and (5) where you have come, she replied that Ambikapur for giving evidence. In paragraph 6 she stated that she knows the accused whose name is Bhurri. She knew Kondi who was her Bua who died. She stated that accused killed

(47)

her Bua. She used the dialect word 'kapat'. She also stated that accused had inflicted tangia blow when her Bua was inside the house. She further stated in para 7 of her evidence that at that time her Bua was cutting pumpkin for preparing badi. In para 8 she stated that she has come to the Court alongwith her parents. In para 9 she denied that she gave evidence at the behest of her parents. She admitted that police had enquired from her. She denied that she was not present at the place of occurrence. She stated that she has only one Bua. At the time of incident she and her Bua both were there and none was there. She has categorically stated that she has seen the incident. She was asked as to whether she was able to understand about the death. She stated that accused beat her Bua, therefore, she died. The trial Court had put the question in paragraph 11 as to who had killed her Bua. She answered that accused present in the Court Bhurri had killed her Bua. In para 12 she denied that she is saying that the accused has killed her Bua at the behest of her mother and father. She has also denied that she is tutored by her parents. Though Satmen Bai (PW-6) is a child witness but the manner in which she answered the questions the Court below relied upon her evidence. We have also gone through the evidence of this witness. There is nothing on record to discredit her evidence. The evidence of PW-2 Mankunwar is also such on which implicit reliance can be placed. In the present case the prosecution has been able to produce eye witnesses. Their evidence fully establish the fact that it was the accused who had

given the tangia blow on the neck of Kondi Bai and as a result of which she died. The evidence of this witness stands corroborated by medical evidence.

10. At this stage, learned counsel for the appellant stated that the accused was not in the village and was working in some nursery. He referred to the evidence of Ashok Kumar, DW-1 and Lala Ram DW-2 wherein they stated that the accused was working in the nursery. We have gone through the evidence of DW-1 and DW-2 and found that the defence version has rightly been rejected by the trial court. We find no substance in the contention. The evidence of Mankunwar (PW-2) & Satmen (PW-6) also go to show that the accused was beating the deceased Kondi Bai. They are eye witnesses of the incident. The lungi which was seized was found stained with blood which is evident from the report of FSL and Serologist (Ex.P/14).

11. Lastly, learned counsel for the appellant advanced the argument that the offence would not fall under Section 302 of the Indian Penal Code and at the most the same would fall under Section 304 of the Indian Penal Code as there was only one injury on the body of the deceased and there was no intention to kill her.

12. State counsel opposed the contention of the learned counsel for the appellant and contended that it is a settled principle of law that number of injuries is irrelevant and it is not always the

(49)

determining factor in ascertaining the intention. He placed reliance upon the decision in the case of **State of Rajasthan vs. Dhool Singh** reported in **(2004) 12 SCC 546 (Para 13)**, wherein the Apex Court held as under:

> *".....The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft in length on a vital part of the body, namely, the neck. This act of the respondent though solitary in number had severed sternocleidal muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim....."*

State counsel further placed reliance upon the decision in the cases of **Thangaiya vs. State of T.N.** reported in **(2005) 9 SCC 650 (Para 22)** & **Darshan Yadav and others vs. State of U.P.** reported in **(2005) 10 SCC 592 (Para 3)** contending that the same view was taken by the Apex Court.

(50)

13. Having considered the facts and circumstances of the case as discussed hereinabove and in view of the fact that the manner in which the accused attacked his wife and inflicted the injury on the neck, which is a vital part of the body, the intention of the accused was absolutely clear to cause death of the deceased. There is no substance in the aforesaid contention. The offence under Section 302 IPC is clearly made out.

14. We are of the considered opinion that the finding, conviction and sentence passed by the trial court do not suffer from any infirmity which may call for any interference by this Court in its appellate jurisdiction.

15. Accordingly, the appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K.Shrivastava
Judge

21-6-2006

Gowri/H